

## MODEL INDEMNITY CONTRACTS ACT

**Editor's Note:** These laws are generally referred to as "Reciprocal Insurance" or "Inter-Insurance."

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An Act Authorizing and Regulating Certain Classes of indemnity Contracts Empowering Corporations to Make Such Contracts and Fixing Certain Fees, and the Penalty for Violation Thereof.

### Section 1. Authority

Individuals, partnerships and corporations of this state, hereby designated subscribers, are authorized to exchange reciprocal or inter-insurance contracts with each other, or with individuals, partnerships and corporations of other states and countries in which they are authorized or not forbidden to do business, providing indemnity among themselves from any loss which may be insured against under other provisions of the laws, excepting life or accident and health insurance.

### Section 2. Execution By Attorney

The contracts may be executed by an attorney, agent or other representative, herein designated "attorney," duly authorized and acting for the subscribers.

### Section 3. Filing of Declaration

Subscribers so contracting among themselves shall through their attorney file with the insurance commissioner of this state a declaration verified by the oath of the attorney, setting forth:

- A. The name or title of the office at which the subscribers propose to exchange indemnity contracts. The name or title shall not be so similar to any other name or title adopted by a similar organization or by any insurance corporation or association as in the opinion of the insurance commissioner is calculated to result in confusion or deception;
- B. The kind or kinds of insurance to be effected or exchanged;
- C. A copy of the form of policy contract or agreement under or by which insurance is to be effected or exchanged;

- D. A copy of the form of power of attorney or other authority of the attorney under which insurance is to be effected or exchanged. The form shall contain a provision authorizing the attorney for and on behalf of the subscribers to file the written instruments prescribed in Section 4;
- E. The location of the office or offices from which the contracts or agreements are to be issued; and
- F. That applications have been made for indemnity upon at least 100 separate risks aggregating not less than \$1,500,000 as represented by executed contracts or bona fide applications to become concurrently effective, or, in case of liability or compensation insurance, covering a total payroll of not less than \$1,500,000.

#### **Section 4. Instrument in Writing for Lawsuits**

Concurrently with the filing of the declaration provided for by Section 3, the attorney shall file with the insurance commissioner an instrument in writing executed by the attorney for the subscribers, conditioned that upon the issuance of the certificate of authority provided for in Section 10, in all suits in this state arising out of such policies, contracts or agreements, action may be brought in the county in which the insured property is situated and service of process may be had upon the insurance commissioner. This service shall be valid and binding upon all subscribers exchanging at any time reciprocal or inter-insurance contracts through the attorney. Three (3) copies of the process shall be served and the insurance commissioner shall file one copy, forward one copy to the attorney and return one copy with his admission of service.

#### **Section 5. Maximum Amount of Indemnity**

There shall be filed with the insurance commissioner of this state by the attorney a statement under the oath of the attorney showing the maximum amount of indemnity upon any single risk and the attorney shall, whenever and as often as shall be required, file with the insurance commissioner a statement verified by his oath to the effect that he or she has examined the commercial rating of the subscribers as shown by the reference book of a commercial agency having at least 100,000 subscribers, and that from the examination or from other information in the attorney's possession it appears that no subscriber has assumed on any single risk an amount greater than ten percent (10%) of the net worth of the subscriber.

#### **Section 6. Commissioner Examine**

Upon the filing of the foregoing papers it shall be the duty of the insurance commissioner to examine and pass upon the same and if found satisfactory to issue a license.

#### **Section 7. Reserves**

There shall at all times be maintained as a reserve a sum in cash or convertible securities equal to fifty percent (50%) of the net annual deposits collected and credited to the accounts of the subscribers on policies having one year or less to run and pro rata on those for longer periods. Net annual deposits shall be construed to mean the advance payments of subscribers after deducting the amounts specifically provided in the subscribers' agreements, for expenses. The sum shall at no time be less than \$25,000, and if at any time fifty percent (50%) of the deposits so collected and credited shall not equal that amount, then the subscribers, or their attorney for them, shall make up any deficiency.

## **Section 8. Report by Attorney**

The attorney shall make a report to the insurance commissioner for each calendar year on or before [insert date] showing the financial condition of affairs at the office where the contracts are issued and shall furnish any additional information and reports required. The attorney shall not be required to furnish for filing the names and addresses of any subscribers nor the loss ratio. The business affairs and assets of the organizations shall be subject to examination by the insurance commissioner.

## **Section 9. Exchange Insurance Contracts**

A corporation now or hereafter organized under the laws of this state shall, in addition to the rights, powers and franchises specified in its articles of incorporation, have full power and authority to exchange insurance contracts of the kind and character herein mentioned. The right to exchange contracts is hereby declared to be incidental to the purposes for which the corporations are organized and as much granted as the rights and powers expressly conferred.

## **Section 10. Exchange Indemnity Contracts**

An attorney, agent or representative who shall, except for purpose of applying for certificate of authority as herein provided, exchange any contracts of indemnity of the kind and character specified in this Act, or directly or indirectly solicit or negotiate any applications for same without first complying with the foregoing provisions shall be deemed guilty of a misdemeanor, and, upon conviction, shall be subjected to a fine of not less than \$100 nor more than \$1,000.

## **Section 11. Certificate of Authority**

Each attorney by or through whom is issued any policies of or contracts for indemnity of the character referred to in this Act shall procure from the insurance commissioner annually a certificate of authority stating that all the requirements of this Act have been complied with, and upon such compliance and payment of the fees required by this Act, the insurance commissioner shall issue a certificate. The insurance commissioner may for cause revoke any certificate of authority.

## **Section 12. Annual License Fee**

An attorney, in lieu of all taxes, shall pay to the state with the filing of each annual report, as an annual license fee [insert number] percent of the gross premiums of deposits for the preceding calendar year, deducting all amounts returned to subscribers or credited to their accounts other than for losses; and shall pay a filing fee of \$[insert number].

## **Section 13. Insurance Law Exceptions**

Except as herein provided, no insurance law of this state shall apply to the exchange of indemnity contracts unless they are specially mentioned.

**Editor's Note:** In 1918, the NAIC adopted the following report, which constituted amendments to the 1912 Model Indemnity Contracts Act.

## Model Indemnity Contracts Act

### Reciprocal or Inter-Insurance

To the National Convention of Insurance Commissioners:

Your Committee on Laws and Legislation, to which was referred the question of examining the laws of the various States pertaining to the exchange of reciprocal or inter-insurance contracts with a view to making recommendations or changes in the Commissioner's Bill, submits the following report:

Your committee does not deem it advisable at this time to recommend legislation in the form of a new bill, but suggests certain amendments to the Commissioner's Bill which will strengthen that measure.

We recommend that the Commissioner's Bill in the form adopted be amended as follows:

First, so that subscribers exchanging fire insurance contracts in the name of an exchange have assets on hand at all times available for the payment of losses a sum of not less than \$50,000.

Second, that the various forms of liability and workmen's compensation insurance exchanges have assets on hand at all times available for the payment of losses the sum of \$100,000.

Third, the attorney in fact in the name of the exchange shall have on hand at all times assets in cash or securities authorized by the laws of the state in which the principal office of the exchange is located, for the investment of funds of insurance companies doing the same kind of business, an amount equal to one hundred percent (100%) of the net unearned premiums or deposit collected and credited to the account of the subscribers, or fifty percent (50%) of the net annual advance premium or deposit collected and credited to the account of subscribers on policies having one year or less to run and pro rata on those for a longer period. In addition to the foregoing sum there shall be on hand at all times in cash or such securities, assets equal to all liabilities on account of outstanding losses and other accrued obligations of such exchange.

Fourth, the attorney in fact may purchase reinsurance upon the risk of any subscriber at the exchange. No attorney in fact shall, however, grant reinsurance upon any risk or risks insured by any other insurance carrier. Any exchange may, however, consolidate with or reinsure its entire business in another exchange upon the approval of the insurance commissioners of the States wherein the exchanges are located.

Fifth, all claims for money advanced by the attorney in fact or subscribers shall be deferred to all claims or other obligations arising under the policies and all other obligations imposed by this law.

The following clause is submitted for the last clause of the Commissioner's Bill:

Except as herein provided, no law relating to fire insurance shall apply to reciprocal or inter-insurance contracts or the execution thereof, unless they are therein specifically mentioned.

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*Chronological Summary of Action (all references are to the Proceedings of the NAIC).*

*1912 Proc. 11-12 (adopted).*

*1918 Proc. 26-27 (amended).*